

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**RICHARD R. TAYLOR**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD74275

DATE: August 28, 2012

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Appeal From:

Moniteau County Circuit Court  
The Honorable Donald L. Barnes, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

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Attorneys:

Jonathan Sternberg, Kansas City, MO, for appellant.

Shaun J. Mackelprang and Dora A. Fichter, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**RICHARD R. TAYLOR,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD74275

Moniteau County

Before Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Richard Taylor appeals from the motion court's denial of his Rule 24.035 motion without an evidentiary hearing. Taylor's motion alleged that the sentencing court punished him with the maximum sentence only because he had exercised his constitutional right to appeal the imposition of special conditions on his probation. The sole question presented by this appeal is whether Taylor was entitled to an evidentiary hearing prior to the denial of his Rule 24.035 motion. We conclude that Taylor was not entitled to an evidentiary hearing.

Affirmed.

Division Three holds:

Taylor's motion contested the legality of the sentence imposed upon revocation of his probation, and argued that the harshest sentence possible was imposed only because Taylor exercised his constitutional right to challenge a condition of probation in the Supreme Court of Missouri, which is unconstitutional. Taylor's claim is cognizable under Rule 24.035.

Taylor was only entitled to an evidentiary hearing on his Rule 24.035 motion if the motion pled facts, not conclusions, warranting relief; the facts alleged were not refuted by the record; and the matters complained of resulted in prejudice to Taylor.

Taylor's motion failed to allege facts that would, if proven, warrant relief. To warrant relief on a claim of retaliatory sentencing, a movant must establish that the exercise of a constitutional right was a determinative factor in the imposition of sentence. A determinative factor is a factor actually considered by the sentencing court. Here, Taylor's motion points to the trial court's statement at sentencing about Taylor's "manipulation" of the system. Taylor alleges that this statement could be read to reference Taylor's exercise of his right to judicially challenge special conditions imposed on his probation. This allegation is not a factual allegation, and is a mere conclusion. The trial court did not make any reference to Taylor's exercise of his right to judicially challenge conditions imposed on his probation at the time it mentioned Taylor's "manipulative" behavior. And Taylor asserts no facts in his motion that, if proven, would require us to conclude that the sentencing court actually considered Taylor's exercise of those rights in

imposing sentence. Taylor's allegation that more favorable sentencing could have been expected is not a self-proving assertion, and would not, even if proven, permit the motion court to surmise that the exercise of judicial rights was a determinative factor in Taylor's sentencing.

In addition, the record refutes Taylor's motion. During the hearing to revoke Taylor's probation, the court heard evidence about Taylor's bad attitude and his failure to comply with his probation conditions. His conduct in performing his probation conditions was referred to frequently by witnesses as "manipulative." These references were not made in connection with Taylor's exercise of his right to judicially challenge certain probation conditions, but rather in connection with his performance of unchallenged conditions, and/or of challenged conditions after the challenges had been exhausted. Thus, the motion court's findings (1) that nothing in the record established that the trial court actually considered Taylor's exercise of his right to judicially challenge probation conditions in imposing sentence, and (2) that the record refutes Taylor's attributed meaning to the trial court's generalized comment about his manipulative behavior are not clearly erroneous.

Opinion by Cynthia L. Martin, Judge

August 28, 2012

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